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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2328/2014*, **

Communication submitted by:	H.A. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The author
State party:	Denmark
Date of communication:	6 January 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 8 January 2014 (not issued in document form)
Date of adoption of Views:	9 July 2018
Subject matter:	Deportation to Afghanistan
Procedural issues:	Inadmissibility *ratione materiae*; insufficient substantiation
Substantive issues:	Right to life; torture, cruel, inhuman or degrading treatment or punishment; non-refoulement; protection of aliens against arbitrary expulsion; right to a fair and public hearing by a competent, independent and impartial tribunal
Articles of the Covenant:	6, 7, 13 and 14
Articles of the Optional Protocol:	2 and 3

1.1 The author of the communication is H.A., an Afghan national born in 1989. His request for asylum in Denmark was rejected and, at the time of submission of the communication, he was in detention awaiting deportation to Afghanistan. At that time, the author claimed that, by forcibly deporting him to Afghanistan, Denmark would violate his rights under articles 6, 7 and 14 of the Covenant. In his subsequent submission, the author added a claim under article 13 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 On 8 January 2014, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures,

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

requested the State party to refrain from deporting the author to Afghanistan while his case was under consideration by the Committee. On 16 January 2014, the Danish Refugee Appeals Board extended the time limit for the author's departure from the State party until further notice, in accordance with the Committee's request.

The facts as submitted by the author[1]

2.1 The author is an ethnic Hazara of the Shia Muslim faith from the village of Siapita (Ziapetaw) in the Wardak Province, Afghanistan. His father, who owned a shop in Jalriz, as well as three cars, had been subjected to extortion by the Taliban over a period of time after having expressed his favourable views of the Government of Afghanistan and the international forces. The Taliban had also believed that the author's father was a spy for the authorities but it was not the case. He was merely satisfied with the rebuilding of the country and the development, and had been outspoken about it with the others in his shop. The Taliban had extorted money from the author's father, and he therefore decided to send the author, the family's youngest son who was unmarried, abroad for protection. The author's elder brother was married and had a small child, and the author's father himself could not leave Afghanistan, because he could not afford to take the entire family out of the country.

2.2 The author first departed Afghanistan illegally[2] in early 2008 and arrived in Greece on 28 May 2008, where he was arrested by the Greek authorities on arrival and detained for between 10 and 12 days. He then had an unauthorized stay in Greece until November 2008 before being sent to Turkey by the Greek authorities. In Turkey, he was detained for 13 days until his family transferred money to pay for an airline ticket back to Afghanistan. The author returned to Afghanistan in December 2008. About four and a half months later, the Taliban demanded such a large sum of money that the author's family realized that they would not be able to pay the requested amount before the deadline given to the author's father by the Taliban. For that reason, on an unspecified date, the Taliban came at night to the house in which the author's family lived and took his father and elder brother with them, and none of them were seen again. On that occasion, the Taliban also beat the author's mother, sister and sister-in-law and asked about the author's whereabouts. The author happened to spend that night at the house of his maternal uncle, who also lived in Siapita. The following morning, the author's mother came to the uncle's house, where she told the author that his father and brother had been taken away by the Taliban after a search of their house. She gave the author 50,000 afghanis, so that he could leave the country. The author's mother believed that if he had been there when the Taliban searched their house, they would have also taken him with them.

2.3 In March or April 2009, the author left Afghanistan for the second time and travelled through Iran, Turkey, Greece, Italy, France, Germany and Sweden to Norway, where he applied for asylum on 24 July 2009. He was refused asylum in Norway on 9 November 2009 and then the Norwegian Directorate of Immigration decided that he had to be returned to Greece under the Dublin II Regulation.

2.4 On 23 January 2010, the author entered Denmark without any valid travel documents and applied for asylum on the same day. As his asylum grounds, the author referred to his fear of being kidnapped by the Taliban in case of his return to Afghanistan. On 9 June 2011, the Danish Immigration Service rejected the author's asylum application. On 25 August 2011, the Ministry of Refugee, Immigration and Integration Affairs (now the Ministry of Justice) refused the author's application for a residence permit on humanitarian grounds.[3] The Refugee Appeals Board upheld the decision of the Immigration Service on 23 January 2012.

2.5 The author submits that he has exhausted all available domestic remedies, since the decision of the Board is not subject to appeal before a court.

[1] The facts on which the present communication is based have been reconstructed on the basis of the author's own incomplete account, the decision of the Refugee Appeals Board of 23 January 2012 and other supporting documents available on file.

[2] The author does not provide further details on this matter.

[3] Reference is made to section 9b (1) of the Aliens Act.

The complaint

3.1 The author claims that his deportation from Denmark to Afghanistan would violate his rights under articles 6 and 7 of the Covenant, as he would be at risk of being killed, kidnapped or raped by the Taliban. He submits, in particular, that he belongs to the Hazara minority, which is under attack from the Taliban, who are mainly ethnic Pashtuns. He adds that he would not be able to find protection because he has no family left in Afghanistan and because the ethnic group to which he belongs is persecuted all over the country.

3.2 The author also refers to the *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Afghanistan*, published by the Office of the United Nations High Commissioner for Refugees (UNHCR) on 6 August 2013, according to which individuals with, inter alia, the following profiles may be in need of international protection: individuals associated with, or perceived as supportive of the Government of Afghanistan and the international community, including the international military forces; men and boys of fighting age; individuals perceived as contravening the Taliban's interpretation of Islamic principles, norms and values; and members of (minority) ethnic groups. He explains that, owing to his travel to Europe, if he were returned to Afghanistan, he would certainly be perceived as having contravened Islamic rules and as being supportive of the Government and/or the international community. He further claims that, given his age, he would be at risk of being forced to fight either for the Government or for the Taliban, and he alleges that sexual assaults on young men are commonly reported in Afghanistan.[4]

3.3 The author also claims that, pursuant to the aforementioned Eligibility Guidelines and contrary to the assessment made by the Board in its decision of 23 January 2012, he certainly needs international protection as a young ethnic Hazara from the Wardak Province. Furthermore, the Eligibility Guidelines make it clear that numerous factors should be taken into account in the evaluation of the availability of internal flight or relocation alternatives in Afghanistan. In this connection, the author submits that the failure of the Board to take those factors into consideration in taking its decision of 23 January 2012 and in maintaining the initial order, obliging the author to leave Denmark, constitutes a violation of articles 6 and 7 of the Covenant.

3.4 The author further submits that his right under article 14 of the Covenant has been violated, since a decision on his asylum application taken by the Board under the administrative procedure could not be appealed to a judicial body.[5]

3.5 In the subsequent submission of 24 September 2014, the author added a claim under article 13 of the Covenant, arguing that his risk of persecution and suffering of irreparable harm upon return to Afghanistan had not been assessed in accordance with the procedural guarantees of this article, since he was unable to appeal the decision of the Board to a judicial body.

State party's observations on admissibility and the merits

4.1 On 8 July 2014, the State party recalls the facts on which the present communication is based and the author's claims, and submits that the communication should be declared inadmissible. Should the Committee declare the communication admissible, the State party submits that no violation of the provisions of the Covenant will occur if the author is deported to Afghanistan.

4.2 The State party describes the structure, composition and functioning of the Board, which it considers to be an independent and quasi-judicial body,[6] and the legal basis of its decisions.[7]

[4] The author does not provide further details on this matter.

[5] The author refers to the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/DEN/CO/17), para. 13.

[6] See *Ahmed et al. v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

[7] The State party refers to sections 7 (1), 7 (2), 31 (1) and 31 (2) of the Aliens Act.

4.3 As to the admissibility of the communication, the State party argues that the author has failed to establish a prima facie case for the purpose of admissibility with respect to the alleged violation of articles 6 and 7 of the Covenant, since it has not been established that there are substantial grounds for believing that his life will be in danger or that he will be in danger of being subjected to torture if returned to Afghanistan. The communication is therefore manifestly ill-founded and should be declared inadmissible.

4.4 The State party further recalls that article 14 of the Covenant lays down the principle of due process, including the right to have access to the courts in the determination of a person's rights and obligations in a suit at law. It follows from the Committee's jurisprudence that proceedings relating to the expulsion of an alien do not fall within the ambit of a determination of "rights and obligations in a suit of law" within the meaning of article 14 (1), but are governed by article 13 of the Covenant.[8] Against this background, the State party submits that asylum proceedings fall outside the scope of article 14 of the Covenant, and that this part of the communication should therefore be considered inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

4.5 On the merits, the State party submits that the author has not sufficiently established that his return to Afghanistan would constitute a violation of articles 6 and 7 of the Covenant. The State party recalls in this regard that its obligations under articles 6 and 7 of the Covenant are reflected in section 7 (2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or cruel, inhuman or degrading treatment or punishment if he or she returned to his or her country of origin.

4.6 As far as the assessment of the credibility of the author's statement is concerned, the State party refers to findings made by the Board in its decision of 23 January 2012. In particular, the Board found that the author had failed to substantiate his grounds for asylum, and that his statement on such grounds had been fabricated for the occasion. In that connection, the Board took into consideration that the author was unable to account for the circumstances surrounding the disposal of his family's three cars. He was thus unable to explain whether the Taliban had taken the cars or whether the family had sold the cars in order to pay the Taliban. The author was also unable to explain why the family, who were originally well off, had not been able to respond in a relevant manner to the threat from the Taliban, for example by moving their shop or by fleeing once they had realized that they could not pay the Taliban.

4.7 The Board also took into account that the author had elaborated on his statement during the asylum proceedings. In connection with his asylum application, the author had stated to the police that he had departed from Afghanistan because his life had been in danger, as a result of his father and brother having been kidnapped by the Taliban. Consequently, the author had been certain that the Taliban had wanted to kidnap him too because his father had expressed his favourable views on the Government and the international forces. Later, the author elaborated on his statement, explaining to the Immigration Service that he had spent the night at the house of his maternal uncle when the Taliban had sought out his family's house. Likewise, until interviewed by the Immigration Service, the author had not mentioned anything about the Taliban having used violence when they had attempted to pressure his family into telling them the author's whereabouts. Moreover, until interviewed by the Immigration Service, the author had not mentioned that his mother had arrived at his maternal uncle's house with money for him so that he could depart the day after the incident. The Board concluded that the author had failed to produce a reasonable explanation for withholding those central parts of his grounds for asylum until interviewed by the Immigration Service. The Board also found that his statement to the effect that he had not had time to make these statements to the police could not lead to a different assessment. Accordingly, the Board found no basis for issuing a residence permit to the author under section 7 (1) or (2) of the Aliens Act.

4.8 The State party submits that the Board's decision under section 7 (1) and (2) of the Aliens Act was made on the basis of a specific and individual assessment of the author's

[8] Reference is made to *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 8.5.

asylum grounds combined with its background knowledge on the general situation in Afghanistan and the specific details of the case. Therefore, there are no grounds for doubting the Board's assessment that the author has failed to substantiate his grounds for asylum and that the author's statement about such grounds was fabricated for the occasion. The State party further submits that the author's communication to the Committee failed to produce new concrete facts about his situation, and that the author is thus in fact trying to use the Committee as an appellate body to have the factual circumstances advocated in support of his claim for asylum reassessed by the Committee. It adds in this regard that the Committee must give considerable weight to the Board's findings of fact, which is better placed to assess such facts in the author's case.

4.9 The State party observes in relation to the author's claim that he is at risk of being forcibly recruited by the Taliban that, according to the report of the Immigration Service,[9] nothing indicates that the Taliban is forcibly recruiting young people since many volunteers join the Taliban. It is equally unlikely that the Taliban will attempt to forcibly recruit ethnic Hazaras, considering that these two groups do not trust each other, and that the Taliban will therefore not trust Hazaras as soldiers.[10] The State party submits, therefore, that the author has failed to substantiate that the Taliban will attempt to forcibly recruit him upon his return to Afghanistan.

4.10 The State party finds that the fact that the author is an ethnic Hazara from the Wardak Province cannot in itself justify his entitlement to international protection. In this connection, the State party submits that, according to the information available,[11] there is a large minority of ethnic Hazaras in the Wardak Province and that they are not at risk of being subjected to abuse falling within article 7 of the Covenant solely due to their ethnic affiliations. Nor does the State party find any specific basis for assuming that the fact that the author, like many other Afghan nationals, has stayed for a period of time in the West would result in him attracting particular attention upon return to Afghanistan. It observes that, since the author does not appear to have been conspicuous in any way, he should be able to take up residence in other areas of Afghanistan, including big cities like Kabul. The author's references to the Eligibility Guidelines (see paras. 3.2–3.3 above), which is included in the general background material of the Board as item No. 497, cannot lead to a different assessment.

4.11 In the light of the foregoing, the State party concludes that there is no basis for doubting, let alone setting aside the assessment made by the Board, that the author has failed to substantiate that his return to Afghanistan would put him at risk of being subjected to persecution or abuse justifying asylum, and thus that returning the author would not constitute a violation of either article 6 or article 7 of the Covenant.

Author's comments on the State party's observations

5.1 On 24 September 2014, counsel informed the Committee that, on an unspecified date, the author had disappeared. Counsel was in contact with the Danish Red Cross Refuge Centre in the hope that the author would reappear. In the meantime, since the power of attorney given by the author to counsel remained in force, counsel submitted that he would continue to represent the author before the Committee.

5.2 Counsel submits that, in addition to the claims under articles 6, 7 and 14 of the Covenant made in the initial submission, he wishes to add a separate claim under article 13 that was not invoked earlier by mistake. He adds that, since the author was unable to appeal the decision of the Board of 23 January 2012 to a judicial body, his risk of persecution and suffering irreparable harm upon return to Afghanistan has not been assessed in accordance with the procedural guarantees of article 13 of the Covenant.

[9] Reference is made to Danish Immigration Service, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process. Report from Danish Immigration Service's fact-finding mission to Kabul, Afghanistan, 25 February to 4 March 2012* (Copenhagen, 2012), pp. 26–28.

[10] Ibid., p. 28. In addition, according to the report, the Taliban mainly recruit ethnic Pashtuns.

[11] Ibid.

5.3 Counsel further notes that the Board has had to reopen the cases of several asylum seekers whose asylum requests had previously been rejected as a result of proceedings before the Committee. He claims that this demonstrates that the Board often makes mistakes. He provides a list of 11 cases registered by the Committee and reopened by the Board in which, after a review of the case, refugee status has been granted. In particular, he refers to the communications submitted on behalf of Afghan nationals that were discontinued by the Committee because the authors were granted refugee status following the Board's review of their cases.[12]

5.4 With regard to the State party's observations on the admissibility of the communication, in particular regarding the violation of the author's rights under articles 6 and 7 of the Covenant, counsel submits that such allegations are, in fact, duly substantiated, as the current situation in Afghanistan is extremely dangerous. He recalls in this regard the author's references to the Eligibility Guidelines.

5.5 As regards the State party's observations on the merits, counsel submits that, due to the author's disappearance, it was not possible to discuss the State party's arguments with him in preparation of the present comments. Counsel reiterates, therefore, the author's initial arguments (summarized in paras. 3.1–3.3 above). He concludes that the author's deportation to Afghanistan would constitute a violation by the State party of articles 6 and 7 of the Covenant and that article 13 and/or article 14 of the Covenant have/has been violated, since the decision made by the Board on 23 January 2012 could not be appealed to a judicial body.

5.6 On 13 October 2015, counsel informed the Committee that the author was apparently so afraid of being deported from Denmark to Afghanistan, despite the fact that the Committee had granted his request for interim measures, that he had fled to Sweden and had applied for asylum there. He adds that the author seems to be suffering from some mental health issues that affect his cognitive capacity. For example, the author had great difficulties in explaining to counsel why he was afraid of staying in Denmark and what motivated him to flee to Sweden. Counsel further submits that the author was deported back to Denmark when the Swedish asylum authorities learned that he already had a case pending in Denmark. The author subsequently expressed his wish to proceed with the consideration of the present communication by the Committee.

5.7 In addition to the comments made by counsel on 24 September 2014, the author referred to the speech made by the President of Afghanistan, Mohammad Ashraf Ghani, on 20 June 2015 on the occasion of the World Refugee Day.[13] In that speech, the President appealed to countries in Europe, Australia, Canada and the United States of America, as well as other countries hosting refugees and asylum seekers from Afghanistan, to "take into account our problems this year" and to "stop expelling Afghan asylum seekers" for lack of documentation. He referred to "the story of our refugees" as "a sad part of our modern history".

5.8 The author further submits that, at the beginning of March 2015, the Afghan authorities officially communicated to the Danish authorities their request to renegotiate the tripartite memorandum of understanding between the Islamic Transitional State of Afghanistan, the Government of Denmark and UNHCR of 18 October 2004.[14] He adds that when the Minister of Justice of Denmark was subsequently asked by a member of parliament about the forced deportations to Afghanistan in the light of the request made by the Afghan authorities, he reportedly replied that the Danish authorities expected the Afghan authorities to comply with the return policy agreed in the framework of the memorandum of understanding.[15] Consequently, the Danish police were not instructed to temporarily stop forced deportations to Afghanistan. The author adds that Norway, Sweden

[12] The author refers, inter alia, to *A.E. v. Denmark* (CCPR/C/115/D/2320/2013).

[13] Available at https://reliefweb.int/report/afghanistan/president-mohammad-ashraf-ghani-s-speech-world-refugee-day.

[14] Available at www.unhcr.org/subsites/afghancrisis/430d7bec2/tripartite-memorandum-understanding-mou-islamic-transitional-state-afghanistan.html.

[15] No further details provided by the author.

and, most recently, the United Kingdom of Great Britain and Northern Ireland temporarily stopped such deportations because of the request from the Afghan authorities.

5.9 The author also refers to a travel warning issued by the Ministry of Foreign Affairs of Denmark, in which it recommends that Danish nationals should not travel to Afghanistan, given the heightened risk of terrorist attacks and kidnappings across the country, including in Kabul.[16] In this context, the author notes with regret that the Danish authorities have so far not accepted the position of UNHCR on the protection needs of asylum seekers from Afghanistan, which is stipulated in the Eligibility Guidelines. Finally, the author adds that the situation in Afghanistan has changed a lot since 2004 when the memorandum of understanding was negotiated.

State party's additional observations

6.1 On 19 February 2016, the State provided additional observations to the Committee and observed that the author's submission of 13 October 2015 did not provide any new information on the conflicts in his country of origin on which the present communication was based.

6.2 As regards the author's reference to the travel advice for Afghanistan from the Ministry of Foreign Affairs of Denmark, the State party submits that the aforementioned travel guidelines provide risk assessments and advice targeted at Danish nationals.

6.3 According to the author's submission of 13 October 2015, he was reportedly so afraid of staying in Denmark that he fled to Sweden at the time when the communication was submitted to the Committee. The State party observes in this respect that it appears from an email of 24 February 2015 from the National Aliens Division of the National Police that, when subjected to departure control, the author stated that he wanted to withdraw his application for asylum in Denmark and to return voluntarily as quickly as possible with the assistance of the International Organization for Migration.

6.4 As regards the author's reference to the Eligibility Guidelines, the statement made by the Afghan President on World Refugee Day in 2015 and the indication from the Afghan authorities in March 2015 that they want to renegotiate the repatriation agreement with the Danish authorities, the State party observes that those references cannot lead to a revised legal assessment of the author's eligibility for asylum. Accordingly, the Board still finds that the general situation in Afghanistan, including in Kabul, is not in itself of such a nature that, for that reason alone, the author meets the conditions for being granted asylum. The State party agrees with the Board's finding.

6.5 The State party further observes that, in his initial submission to the Committee, the author claimed that Denmark had also violated article 14 of the Covenant. In this respect, the State party submitted in its observations of 8 July 2014 that asylum proceedings fell outside the scope of that article. The State party notes that the author's counsel has subsequently invoked a violation of article 13 and/or article 14 of the Covenant with regard to the Board's decision of 23 January 2012, due to the impossibility of appealing that decision before a court. In response to this claim, the State party refers to the Committee's jurisprudence, which states that article 13 offers some of the guarantees afforded by article 14 (1) of the Covenant, but not the right to appeal[17] or the right to a court hearing.[18] Therefore, the State party considers that the author has failed to give an account of why article 13 of the Covenant affords a right to appeal and to establish a prima facie case for the purpose of admissibility of his claim under article 13 of the Covenant, as required by rule 96 (b) of the Committee's rules of procedure. This part of the communication is therefore manifestly ill-founded and should be declared inadmissible.

[16] Denmark, Ministry of Foreign Affairs, "All travel to Afghanistan discouraged". The author does not provide further details in relation to this travel advice for Afghanistan, including the date on which it was issued.

[17] The State party refers to *X and X v. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3.

[18] The State party refers to *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979). In this communication, the Committee did not dispute the assertion that a mere administrative review of a decision expelling an alien from Sweden did not amount to a violation of article 13 of the Covenant.

Author's comments on the State party's additional observations

7. On 29 April 2016, the Committee granted the author's request dated 28 April 2016 for an extension of the deadline for the submission of his comments on the State party's additional observations until 24 May 2016, in order to give him an opportunity to reflect in the comments the updated Eligibility Guidelines.

Issues and proceedings before the Committee

Considerations of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that he has exhausted all domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 As to the author's claim under article 14 of the Covenant that he was unable to appeal the negative decision of the Board to a judicial body, the Committee refers to its jurisprudence that proceedings relating to aliens' expulsion do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14 (1) but are governed by article 13 of the Covenant.[19] The Committee therefore concludes that this claim is inadmissible *ratione materiae*, under article 3 of the Optional Protocol.

8.5 The Committee further notes that the author made an identical claim, i.e. that he was unable to appeal the negative decision of the Board to a judicial body, under article 13 of the Covenant. The Committee recalls its jurisprudence, according to which this provision offers asylum seekers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to judicial bodies.[20] The Committee therefore concludes that the author has failed to sufficiently substantiate his claims under article 13 of the Covenant, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.6 The Committee notes the State party's argument that the author's claims with respect to articles 6 and 7 of the Covenant should be held inadmissible owing to insufficient substantiation, as the author "has failed to establish a prima facie case for the purpose of admissibility of his communication". The Committee considers, however, that the author has adequately explained why he feared that forcible return to Afghanistan would result in a risk of treatment incompatible with articles 6 and 7 of the Covenant for the purposes of admissibility. The Committee is therefore of the opinion that, for the purpose of admissibility, the author has sufficiently substantiated his allegations under articles 6 and 7 of the Covenant.

8.7 In the light of the above considerations, the Committee considers the communication admissible, insofar as it raises issues under articles 6 and 7 of the Covenant, and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

[19] See, for example, *X v. Denmark*, para. 8.5. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.

[20] See, for example, *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 6.4; and *S.Z. v. Denmark* (CCPR/C/120/D/2625/2015), para. 7.12. See also, the Committee's general comment No. 32, paras. 17 and 62.

9.2 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.[21] The Committee has also indicated that the risk must be personal[22] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[23]

9.3 The Committee recalls that it is generally for the organs of State parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[24]

9.4 The Committee notes the author's claim that he would be at risk of being killed, kidnapped or raped by the Taliban, because he belongs to the Hazara minority, which is under attack by the Taliban, who are mainly ethnic Pashtuns. The Committee also notes the author's allegations that his father and elder brother were kidnapped by the Taliban in 2009 due to the inability of the author's father to pay the requested amount of money before the deadline given to him by the Taliban. The Committee also notes the author's claim that, due to his real or perceived individual characteristics, he fits the profiles of asylum seekers from Afghanistan who may be in need of international protection, according to the Eligibility Guidelines (see, paras. 3.2–3.3 above).

9.5 In this connection, the Committee notes the State party's argument, as established by the Board in its decision of 23 January 2012, that the author's statement on his grounds for asylum had been fabricated for the occasion (see para. 4.6 above) and he had elaborated on his initial statement during the asylum proceedings (see para. 4.7 above). The Committee also notes the State party's submission that the Board's decision was based on a specific and individual assessment of the author's asylum grounds combined with its background knowledge on the general situation in Afghanistan and the specific details of the case. The Committee takes note that the State party's authorities, having examined the evidence provided by the author in his asylum application, including interviews and oral hearings, found that the author had not shown that there were substantial grounds for believing that his life would be in danger or that he would be at risk of being subjected to torture if returned to Afghanistan.

9.6 The Committee also takes note of the State party's contention that the author's claim that he is at risk of being forcibly recruited by the Taliban is not consistent with the background material available, according to which many volunteers join the Taliban, hence there is no need for them to forcibly recruit young people, especially ethnic Hazaras, considering that these two groups do not trust each other. The Committee further notes the State party's statement that, according to the available background information, there is a large minority of ethnic Hazaras in the Wardak Province and that they are not at risk of being subjected to abuse falling within article 7 of the Covenant solely due to their ethnic affiliations. Therefore, the fact that the author is an ethnic Hazara from the Wardak Province cannot in itself justify his entitlement to international protection. In addition, the Committee notes the State party's argument that there was no specific basis for assuming that the fact that the author, like many other Afghan nationals, has stayed for a period of time in the West would result in him attracting particular attention upon return to Afghanistan.

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[21] See the Committee's general comment No. 31, para. 12.

[22] See, for example, *Y v. Canada* (CCPR/C/114/D/2280/2013), para. 7.2; and *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2.

[23] See, for example, *Y v. Canada*, para. 7.2; *X v. Denmark*, para. 9.2; and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

[24] See, for example, *P.T. v. Denmark*, para. 7.3; *B.L. v. Australia* (CCPR/C/112/D/2053/2011), para. 7.3; and *Z v. Australia* (CCPR/C/111/D/2049/2011), para 9.3.

9.7 The Committee notes the author's claim that the Board often makes mistakes (see para. 5.3 above) and that it has failed to take into account the position of UNHCR on the protection needs of asylum seekers from Afghanistan in its decision of 23 January 2012. The Committee observes, however, that the author has not identified any irregularities in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account. It considers that, while the author disagrees with the factual conclusions of the State party's authorities, he has not shown that those conclusions were clearly arbitrary or manifestly erroneous, or that they amounted to a denial of justice.

9.8 The Committee recalls that the obligation not to remove an individual contrary to a State party's obligations under the Covenant applies at the time of removal and that, in cases of imminent deportation, the material point in time for assessing this issue must be that of its own consideration of the case. [25] Accordingly, in the context of the communications procedure under the Optional Protocol, in assessing the facts submitted by the parties for consideration, the Committee must also take into account new developments that may have an impact on the risks that an author subject to removal may face. In the present case, the information in the public domain has signalled a significant deterioration of the situation in Afghanistan in recent times.[26] However, on the basis of the information in the case file, the Committee is not in a position to assess the extent to which the current situation in his country of origin may impact the author's personal risk. In this context, the Committee recalls that it remains the responsibility of the State party to continuously assess the risk that any individual would face in case of return to another country before the State takes any final action regarding his or her deportation or removal.

9.9 Without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported, and in the light of the available information regarding the author's personal circumstances, the Committee considers that the information before it does not show that the author would face a personal and real risk of treatment contrary to article 6 or article 7 of the Covenant if he were removed to Afghanistan.

10. The Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the removal of the author to Afghanistan would not violate his rights under articles 6 or 7 of the Covenant.

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[25] See, for example, *S.Z. v. Denmark*, para. 7.9.

[26] See, for example, Norwegian Refugee Council, Internal Displacement Monitoring Centre and Samuel Hall, *Escaping War: Where to Next? A Research Study on the Challenges of IDP Protection in Afghanistan* (Oslo, 2018). Available at www.nrc.no/globalassets/pdf/reports/escaping-war---where-to-next/nrc_idp_escaping-war_where-to-next.pdf.